

Attachment A

Comments and Responses – Milne Point Pipeline Public Testimony

Commenter #1 - Comment: *“ There hasn’t been any complete studies of the pipeline impact on the village. There hasn’t been any studies on the subsistence resources that Nuiqsut residents depend on”....”Also more studies be done on the impacts of the animals, birds and humans that acquire the area. We feel there is impact and studies need to be done.”*

Response: The issue of the impact of North Slope oil and gas activities on subsistence activities, notably caribou migration, has been considered since serious exploration activity began in the 1960’s. Additional studies have been conducted since then. There is no conclusive evidence on the impact of these activities on caribou migration. However, the conclusions of some of these studies have resulted in pipeline design and construction criteria. For instance, the standard for big game movement came from North Slope caribou migration studies conducted by the Alaska Department of Fish and resulted in the five-foot minimum clearance for above ground pipelines, which was adopted by the North Slope Borough as the acceptable standard for big game movement. This requirement was addressed during the original design and construction review process. This standard is now an enforceable policy under the Alaska Coastal Management Plan, and all North Slope above ground pipelines must adhere to it. The pipelines on the leases being considered for renewal meet this five-foot minimum clearance requirement.

Comment: *“There are no emergency services...available on the road for people that are traveling”*

Response: For the other issues you raise, I have no ability, or authority, to influence them through a lease renewal application. Regarding emergency services, that is an issue the Village, in conjunction with the Borough and the Alaska Departments of Public Safety, Transportation, and Community and Economic Development, must address. Better access to emergency facilities along these pipelines or at the North Slope oil and gas production facilities may be able to be better coordinated with the producer voluntarily.

Comment: *“facilities, they need to be more people friendly. We know that we’re in a state of war and security is very high in the Prudhoe and Kuparuk area, but the Native village would like to remind that Native village members are U.S. citizens, they care about the country and the environment, I think this area more than anyone, and look to security of the fields to treat us like foreigners and – to treat like we’re terrorists is a big toll on the village. Like we said, we understand we’re in a war and we’ve lived through these impacts, but that also needs to be addressed. We also feel like more time and more experience, more training needs to be put into the local people in working in the workforce of the pipeline.”*

Response: On the issue of friendliness at the production facilities, I have no authority over this, and it cannot be tied to the conditions for renewal. The North Slope operators

do have security measures and precautions they take, that may on occasion, result in perceived slights or disrespect to local residents. This is an issue best resolved with the local government, the operators of the facility and the Department of Public Safety, if the situation is serious enough. It is in the best interests of the North Slope operators to be cordial and polite with their neighbors.

The issue of lack of employment opportunities is a serious concern, but again, beyond my authority, as a term or requirement for lease renewal. There is no provision in the lease requiring preference for local or Native hire. In fact, as you are probably aware, the State cannot place those requirements on companies. The fact is, most of the jobs in the oil and gas industry require certain levels of training, and often times the prospective employee must complete that training before they can obtain a position. There are programs available for job training. The Borough may be able to help. The companies can identify the necessary training programs persons must have, and the locations that they are available. The Alaska Department of Labor and Workforce Development can be of assistance, as well as the U.S. Department of Labor.

Commenter #2 – Comment: (Translated Testimony) “ *When they moved there to Nuiqsut there was nothing, but they could see oil activity happening, they saw oil exploration and they saw people traveling in that area back when they moved and they could see the activity from Nuiqsut and they feel like the subsistence activity was locked up because of all the activity happening in Nuiqsut. But although there’s been activity and the pipeline is close and then – but at the same time the cost for diesel is very expensive and it gets more – they use a lot more in the Wintertime, they use several gallons a month. Although the activity is close by and the – and yes it is close by, the pipeline is close, but they can’t – you know, they still have to pay a lot of money for Diesel fuel, it’s still very expensive. Although the development is close – so close that you can look at it.*”

Response: On the issue of the cost of Diesel Fuel, I have no authority over this and cannot tie it to one of the conditions for renewal. I can sympathize with you and everyone else in rural Alaska who depend on Diesel Fuel to operate needed equipment. It is very expensive. However, the proximity of Nuiqsut to a production facility such as the Alpine development does not have any bearing on the price you pay for Diesel. The fact is, the nearest refinery for Diesel Fuel is in Fairbanks and everyone who lives in rural Alaska must pay to have it shipped from there.

Comment: “*She was looking at the river one time and traveling I think between Nuiqsut and Prudhoe Bay and, you know, they crossed several rivers along the way and they see bridges with – you know, pipelines with a road and with a pipeline crossing. And she goes to the hospital, a lot of people from Nuiqsut and other places, but especially Nuiqsut, they go to Anchorage or Barrow they – ANS helps some and also Cookpik (ph), the corporation helps them. Anyway, when they – some people go to the hospital down in Anchorage, although it costs them money it’s a lot cheaper and ANS helps them and they were wondering – she was wondering – there’s no road to Prudhoe Bay but they see several other river crossings with bridges and pipeline crossings and they would like to*

have some help from the industry, you know, to build a road across from Nuiqsut so they can have an easier time to go to Prudhoe. And the only time they have roads I think is in the Wintertime with Ice roads and stuff but they would like to have a all season ability to travel to Prudhoe Bay not only for – you know, because they can travel to get things from there but also they can go to the hospital in Fairbanks or in Prudhoe Bay.”

Response: Concern over the lack of an all weather road is again, beyond my authority, to use as a condition for lease renewal. However, this issue is being looked at and is part of the Department of Transportations NW Alaska Transportation Plan. Phase II of this plan, which was presented to villages in the North Slope Borough in March of 2002 includes a provision to study the feasibility of building a road from Nuiqsut to the Dalton Highway. Additional information on this can be obtained from the Department of Transportation planning office in Fairbanks.

Comments: *“And also she’s concerned, since the industry came and Kuparuk or you could see Alpine and there’s – and they’ve use a lot of gravel, they – in that area and she feels that because of the use of gravel by the industry they’re taking a lot of gravel that could be helpful for Nuiqsut. They’re having gravel shortages to help build the community. It’s grown so much that she feels that the gravel needed to help build – help develop Nuiqsut is not enough now. And they should – the industry should have helped long ago and I think she said that people shouldn’t be afraid to say anything to the industry or to anybody or any entity in general.”*

Response: As for concern over the use of gravel by the oil industry I can address only the sale of state owned gravel resources. Gravel used in the construction of the Alpine facility came sources owned by Arctic Slope Regional Corporation. State owned gravel is sold by the cubic yard under a material sales contract at prices reflecting the current fair market value. Gravel is only extracted from land classified as material sites that have been determined to have quantities suitable for the intended use. Additional information on this matter can be obtained from the Dept. of Natural Resources Northern Field Office in Fairbanks.

Comment: *“She’s concerned about the caribou crossing. She thinks its changed the migration and she’s also concerned that, you know, the pipeline – the VSM’s were to low and it – you know, she doesn’t see how the caribou can go underneath the pipeline to get to wherever they’re going. And the industry should build the pipelines for caribou crossings or where the migration paths of the caribou are they should identify those and bury the pipeline where the caribou can cross much easier.”*

Response: The issue of the impact of North Slope oil and gas activities on subsistence activities, notably caribou migration, has been considered since serious exploration activity began in the 1960’s. Additional studies have been conducted since then. There is no conclusive evidence on the impact of these activities on caribou migration. However, the conclusions of some of these studies have resulted in pipeline design and construction criteria. For instance, the standard for big game movement came from North Slope caribou migration studies conducted by the Alaska Department of Fish and resulted in the five-foot minimum clearance for above ground pipelines, which was adopted by the

North Slope Borough as the acceptable standard for big game movement. This requirement was addressed during the original design and construction review process. This standard is now an enforceable policy under the Alaska Coastal Management Plan, and all North Slope above ground pipelines must adhere to it. The pipelines on the leases being considered for renewal meet this five-foot minimum clearance requirement.

Commenter #3 - Comment: *“The DEC Report on Compliance, SPC Report on Compliance and Commissioner’s Determination is false and misleading where it materially omits the Alaska Supreme Court Opinion, Lakosh v. Department of Environmental Conservation, et.al., 49 P3d 1111 (2002), that establishes as a matter of law that DEC failed since April 4, 1997, to enforce AS 46.04.030(e), with respect to evaluation of oil spill prevention and response technologies required in oil spill contingency plans.”*

Response: The Alaska Supreme Court's decision in *Lakosh*, supra., ruled that the definition of "best available technology" contained in the DEC's oil spill prevention and cleanup regulations (18 AAC 75.445(k)(1) and (2)) was contrary to the legislative intent expressed in AS 46.04.030(e). The Court therefore declared that regulation invalid. In direct response to the *Lakosh* decision, the 22nd Alaska Legislature enacted SB 343, which amended AS 46.04.030(e) for the express purpose of overruling the *Lakosh* decision. SB 343 expressly validated and reinstated the "best available technology" regulations that the *Lakosh* decision had invalidated, and expressly approved/ratified all outstanding Oil Discharge and Prevention Contingency Plans that had been approved by the DEC under the challenged regulations. The Governor signed SB 343 (ch. 9, SLA 2002) into law on April 17, 2002. In summary, the Alaska Legislature and Governor have reinstated and ratified the DEC's use of the regulations at issue in *Lakosh*, supra., and have thus expressly determined that DEC's application of those regulations in review and issuance of oil spill contingency plans fully satisfies the legislative intent of AS 46.04.030(e).

Comment: *“Determinations regarding compliance with law and lease provisions designed to provide for reasonable concurrent use and provide for due process must be deemed false and incomplete where DEC failed to perform the mandated technology analyses, present them for public review and require permittees’ c-plans to include sufficient quantities of the best technology available at the time the permit applications were submitted or reviewed”.*

Response: See response to comment 1.

Comment: *“The leases cannot provide reasonable concurrent use where there is an established inability to timely and reliably: detect spilled oil under ice; recover spilled oil from ice bearing waters; recover oil in high river currents; cap ruptured wells; clamp ruptured pipes; prevent the spread of spilled oil; exclude oil from sensitive areas before oil reaches them; utilize the best practicable technology available for spill detection, control, containment, recovery, restoration and logistical support for these mandated efforts”.*

Response: The issues raised concerning the lessee's ability to respond to an oil spill under adverse arctic conditions are issues addressed by DEC in review of the lessee's oil discharge prevention and contingency plan ("C-Plan"). The SPCO acknowledges that the response issues raised in the comment are challenging. However, response techniques to these potential threats are addressed in the lessee's C-Plan, as well as their Operations Manual. The pipeline system is designed and operated to reduce these threats. The pipeline is above ground, and areas near major river crossings have pipeline valves that can stop the flow of oil, if necessary. The threat of an environmental impact from pipeline operations does not reduce or impact reasonable concurrent use.

Comment: *"DNR may not defer enforcement of its spill contingency planning duties to DEC where DEC's interpretation and enforcement of applicable law has been found deficient by the Alaska Supreme Court. DNR must take affirmative action to insure Lessee's full compliance with applicable law and lease provisions where DEC is derelict in its duties. DNR's failure to take affirmative corrective action is prima facie evidence of an intent to collude with DEC and its permittees to violate state law".*

Response: DNR has taken affirmative action to ensure the Lessee's compliance with applicable law and lease requirements in its spill contingency planning. DNR properly exercises its authority under the lease by deferring spill contingency planning to the State agency with statutory authority and oversight over this program. The issue of DEC oversight and implementation of best available technology was resolved with passage of SB 343 (see response to comment 1, above). Commenter's characterization of DEC as "derelict in its duties" is unfounded. Further, in addition to the DEC administered C-Plan, in compliance with the provisions of the ROW Lease(s) the lessee also has adopted an SPCC Plan and an Operations Manual that address spill prevention and response measures.

Comment: *"Commissioner Pourchot must undertake immediate and comprehensive evaluation of the Lessee's ability to provide for reasonable concurrent uses of potentially affected natural resources consistent with his obligation under Article VIII, Section 8 of the Alaska State Constitution".*

Response: The commissioner has properly evaluated the Lessee's ability to provide for reasonable concurrent uses of the potentially affected natural resources, consistent with his obligation under the Alaska Constitution, throughout the history of the lease, including review of the renewal application.

The lease was issued in compliance with, and under the authority of the State of Alaska Right-of-Way Leasing Act (AS 38.35). AS 38.35 incorporates the terms and requirements of Article VIII, Section 8 of the Alaska State Constitution, and was in fact enacted for the purpose of implementing those broad constitutional requirements of Article VIII, Section 8. The lease provides remedies in the event of any breach of its terms, or any impact or degradation to natural resources. The lessee has provided the State adequate proof of financial guaranty to cover any costs or damages that could occur

during operations over the life of the lease. To date, no issues have arisen from leasehold operations that have, or had the potential, to impact concurrent uses of natural resources.

Proposed amendments to Commissioner's renewal determination. In addition to the five comments reviewed above, the commenter has submitted five proposed amendments to the commissioner's proposed renewal determination as published July 5, 2003. The common basis or requirement suggested for the five proposals arises directly from the commenter's suggested interpretation of the effect of the Supreme Court's *Lakosh* decision. As discussed above in response to comment 1, the commenter has overlooked the fact that the Alaska Legislature and Governor have effectively overruled the *Lakosh* decision through the enactment and execution of SB 343 (ch. 9, SLA 2002) into law on April 17, 2002. The DEC's implementation of its oil spill contingency regulations, and DEC's approval of spill prevention and contingency plans under those regulations has been ratified by statute.